

## **Written evidence submitted by Education Otherwise (CWSB09)**

### **Children's Wellbeing and Schools Bill**

Written evidence submitted by Wendy Charles-Warner on behalf of Education Otherwise, the home education charity. Education Otherwise has approaching fifty years of experience in home education practice and procedures with my personal experience of home education law and practice exceeding forty years. The charity works with home educating families and local authority education staff, including the provision of our advice service, helpline and local authority professional development courses.

Education Otherwise would very much welcome the opportunity to give oral evidence to the committee in respect of the Children's Wellbeing and Schools Bill.

#### **Executive summary**

- Education Otherwise is deeply concerned that this Bill will damage relationships between local authorities and home educating families acting against the interests of children.
- Education Otherwise is extremely concerned by several aspects of this Bill which undermine the primacy of the parent in their child's education.
- Children should not be required to undertake medical examination in order to take part in work experience as it will undermine their ability to move toward adult independence.
- Subjecting parents to formal notices to satisfy the local authority on the basis of the authority conducting enquiries under section 47 of the Children Act 1989 goes too far, as 78% of enquiries do not end in child protection plans.
- Local authorities should not be empowered to undermine the rights and duties of parents to decide their child's best interests. No other cohort of children is subject to such a test, save for when a court order is in place.
- No child should be subjected to effectively mandated visits to their home save in very exceptional circumstances.

#### **Submission**

1. As a result of the aftermath of the Graham Badman report in 2009, relationships between local authorities and home educating families were at their lowest ebb. The charity has worked tirelessly in recent years to promote and encourage the development of positive practice by local authorities, which builds mutual respect, mutual trust and leaves parents feeling safe to approach their local authority for support if required. We have had considerable success in doing so.
2. Education Otherwise is deeply concerned as we are already seeing evidence of this Bill creating conflict between local authority staff and home educating families where such conflict was minimal previously. This will cause positive relationships to be extremely difficult, or impossible to rebuild. Such damage does not support

children's wellbeing and leads to adversarial relationships which are damaging to all stakeholders.

3. Overall, Education Otherwise is extremely concerned by several aspects of this Bill but most worryingly, by those which undermine the primacy of the parent in their child's education. Legal advice has been obtained from senior counsel who shares our concern in respect of the legality of those measures. However, the committee has made clear in its call for evidence that only a brief submission period has been allocated and the later the submission, the less likely it is to be read and fully considered. In light of this we are making this initial submission with legal argument to follow.
4. In order to assist the committee's line by line scrutiny references used are to page and line number in the original published Bill.
5. Page 7 line 18. '**16LB Consistent identifiers for children** Our service users and members are deeply concerned about this measure in light of the frequency with which data breaches occur in local authorities and other public bodies. *'Analysis of official data shows between 2020 and August 2021, around 40% of the 777 incidents recorded by the National Cyber Security Centre (NCSC) affected the public sector'*.<sup>[1]</sup> Education Otherwise holds records for the last four year of numerous data breaches by local authority education officers and home educating families have been put at risk by such breaches. Furthermore, previous iterations of children's track and trace systems have been found to be unacceptable (Contact Point and the Supreme Court finding in respect of Children and Young People (Scotland) Act 2014). Whilst well intentioned, this section holds significant risk to family rights and privacy.
6. Page 38 line 15. **Child employment** *'5) The provision that may be made in reliance on subsection (4)(a) includes provision. 15(a) authorising a local authority in England to request such information as the authority considers appropriate, or to require a child to have a medical examination, for the purpose of enabling the authority to determine an application;'*
7. Whilst not specifically targeted at home educating families, young people in those families very often undertake work experience and require permits from the local authority to do so. This requirement would deter a great many young people from taking up work experience which could be invaluable to their future independence. Feedback from our service users is clear that their family members would not take up work experience if this requirement is enacted.
8. Page 45 line 32 to page 46. '**434A Local authority consent for withdrawal of certain children from school ....(4) Condition B is that a local authority in England is (a)**

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<sup>[1]</sup> HM Government (2022) 'Government Cyber Security Strategy 2022 -2030'. Cited in Shepherd, E. (2023) 'Amid a flurry of public sector data breaches, what will it take for the sector to crack privacy?' [Online] Available from: <https://www.privacycompliancehub.com/gdpr-resources/amid-a-flurry-of-public-sector-data-breaches-what-will-it-take-for-the-sector-to-crack-privacy/>

*conducting enquiries under section 47 of the Children Act 1989 (duty to investigate) in respect of the child.'*

9. No reasonable person could object to this provision in cases where children are subject to a Child protection Plan (CPP), but condition B goes much too far. Additional enquiry may be warranted, but formal notice to satisfy in not acceptable. In 2024 there were 224,520 s47 investigations and on the reporting date only 49,900 were on child protection plans<sup>[2]</sup>. That is 78% of children for whom the investigation does not end in a child protection plan. Consequently, 78% of those children's parents would be subject to stressful formal notices requiring them to satisfy the local authority that their education provision is suitable with no reasonable cause for them to do so.
10. This situation is exacerbated by home educating families being twice as likely to be referred to Children's Social Services (CSS) than school children are and yet no more likely to be subjected to a child protection plan<sup>[3]</sup>. There is significant over referral of home educated children, in part driven by Government narrative conflating home education with safeguarding risk and in part by misunderstanding of home education itself. Following referral, CSS guidance lists 'not in school' (as opposed to not in education) as a risk factor, social workers have no, or limited, understanding of home education and no training in home education, which leads to triggering of s47 investigation based on, effectively, the simple fact that a child is home educated.
11. This provision also feeds into the weaponising of malicious referral by domestic abuse perpetrators. The Home Office and professionals working in the family court are fully aware that domestic abuse can and often does, involve the use of repeat referrals to CSS and repeat proceedings to perpetuate abuse through the court system retraumatising victims<sup>[4]</sup>. This weaponising of children against the other parent leads to significant harm<sup>[5]</sup>. Significant numbers of home educating, domestic abuse victims, face repeated malicious allegations to CSS of significant harm accompanied by repeat applications through the court, by the perpetrator, to seek to force the child into school. CSS will have its own record of referrals of serious nature which trigger a s47 investigation. That investigation period can last months, with proceedings running into years. The situation becomes cyclical as CSS will continue

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<sup>[2]</sup> (Gov.UK 2024 'Explore Education Statistics, Reporting year 2024 Children in need' [Online] Available from: <https://explore-education-statistics.service.gov.uk/find-statistics/children-in-need>)

<sup>[3]</sup> Charles-Warner, W. (2019) 'Home Education and Child Abuse: How Media Rhetoric Drives the Myth'. CPE. [Online] Available from: <https://www.educationotherwise.org/wp-content/uploads/2021/07/Home-Education-and-Child-Abuse-How-Media-Rhetoric-Drives-the-Myth-2.pdf>

<sup>[4]</sup> Home Office (2024) 'Independent report The Family Court and domestic abuse: achieving cultural change'. [Online] Available from: <https://www.gov.uk/government/publications/the-family-court-and-domestic-abuse-achieving-cultural-change/the-family-court-and-domestic-abuse-achieving-cultural-change-accessible-version#chapter-2-continuing-issues-for-adult-and-child-victims-and-survivors-of-domestic-abuse-in-the-family-court>

<sup>[5]</sup> 3. Dalgarno, E., Ayeb-Karlsson S., Bramwell D., Barnett A. and Verma A. (2024) 'Health-related experiences of family court and domestic abuse in England: A looming public health crisis'. [Online] Available from: <https://www.tandfonline.com/doi/full/10.1080/26904586.2024.2307609#abstract>

its investigations or move to CPP, until the court makes its final order whilst the very presence of a s47 investigation, or CPP, will be taken as indicative that education is not suitable. Then, the court seeing that a formal notice has been served under the Education Act 1996 s437 (the current formal notice provision) will take that as meaning that education is not suitable and be minded to order school attendance.

12. Page 46 line 34 '*(b) must refuse consent if the local authority considers (i) that it would be in the **child's best interests** to receive education by regular attendance at school.*' This grossly undermines the primacy of the parent as it is long established that the parent is the arbiter of what is in the best interests of the child. Should parents disagree about the best interests of the child, the aggrieved parent can make an application to the Family Court to decide those easy interests. Should CSS consider the parent to not be acting in the best interests of the child and causing that child significant harm, CSS can make an application for a care or supervision order. Nothing short of a court order subjects any other cohort of children to a 'best interests' decision.

13. Page 39 line 14 '*436C Content and maintenance of registers (1) **(d) the amount of time that the child spends receiving education from each parent of the child,***

***(e) if the child receives education from a person other than their parent—***

***(i) the names and addresses of any individuals and organisations involved in providing that education, (ii) a description of the type of each provider named under sub-paragraph (i), (iii) the postal address of each place where that education is provided (where different from the address in sub-paragraph (iv) the total amount of time that the child spends receiving that education and the amount of time the child spends receiving that education without any parent of the child being actively involved in the tuition or supervision of the child.'***

14. This reporting requirement places an onerous burden on families, specifically those families with SEN, whose children's provision can fluctuate day on day. Education Otherwise's random sampling to better understand this burden, disclosed families with initial report liability of 64 separate providers and others with frequently fluctuating use of providers. clarification of what and who constitutes an education provider must not be left to guidance but should be clear on the face of the Bill.

15. Page 50 line 42 '*(3) A register under section 436B may also contain any other information the local authority considers appropriate.*' This provision allows carte blanche to local authorities to hold any data relating to children and families which they see fit. Data recording and retention should be the minimum required to undertake the required task and should not be open ended in this way.

16. Page 51 line 19 '*436D Provision of information to local authorities: parents*

***(1) A parent of a child who is eligible to be registered by a local authority in England under section 436B must (b) inform the authority of a change, of which the parent is aware, to any of the information required to be included in the register under section 436C(1): (the time period for informing the local authority is 15 days).'***

17. It is manifest that for many families, this provision will place an onerous reporting burden on them, detracting from their time available to educate their child. In cases in which parental time spent educating the child changes regularly (this can be week on week) or where providers change regularly, particularly for SEN children, this would have an especially deleterious effect.
18. Page 53 line 3 '*436E Provision of information to local authorities (by education providers)*' This provision will place an unwarranted burden on providers which will lead to withdrawal of services to home educating families or, at the very least, increased costs to home educating families in order to service the requirement. This will again, have a deleterious effect on those families' ability to educate their children.
19. Page 55 line 1 '*436G Support*' Parents have for many years been asking the DfE to make provision for home educated children to sit exams (it is hard to find and when found extremely costly) and yet this is not even mentioned. It would be cost neutral or low cost for such arrangements to be made at fees applicable to schools (reducing the cost to families even when they might locate other providers) and not excessively expensive to fund those exams. Exam fees are funded for every school child.
20. Page 58 line 4 '*A local authority in England must serve a preliminary notice on a child's parent in relation to a child ... Condition B is that (a) the local authority or another local authority is (i) **conducting enquiries in respect of the child under section 47 of the Children Act 1989 (duty to investigate)**.*' Again, see paragraph 10 above. No reasonable person could object to this provision in cases where children are subject to a Child protection Plan (CPP), but condition B goes much too far. Additional enquiry may be warranted, but formal notice to satisfy in not acceptable. This could result in a parent being subject to repeat requirement to satisfy in cases in which the education provision is not in question but s47 investigation in place for unrelated reasons (the child being overweight [recent case], domestic abuse, malicious referral, poor housing are examples.
21. Page 58 line 35 '*35(6) Condition C is that (c) the child's **parent has not provided that information before the end of the relevant period** (as defined in section 436D(4)(a)), **or has provided incorrect information.***' The provision of incorrect data is inevitable and this section should be clarified as relating to 'intentional' provision of incorrect data.
22. Page 59 line 26 '*(ii) it is in the best interests of the child to receive education otherwise than by regular attendance at school, in a case where condition B is cited in the notice..*'
23. Again, please refer to paragraph 13. This grossly undermines the primacy of the parent as it is long established that the parent is the arbiter of what is in the best interests of the child. Furthermore, the obvious and foreseeable outcome of this provision will be that a parent could be providing exemplary education to a child who is achieving or even excelling educationally but, CSS or an education officer,

particularly those with inherent bias toward school, could then serve a School Attendance order based solely on their view that school is in children's best interests.

24. **Page 59 line 37** '(c) may request the child's parent on whom the preliminary notice has been served under section 436H to allow the local authority to visit the child inside any of the homes in which the child lives. (3) If a request under subsection (2)(c) is refused by the person to whom it is made, the local authority must consider that to be a relevant factor in deciding whether the child's parent has failed to satisfy the local authority as mentioned in subsection'
25. Whilst this is framed as a 'request' the fact that declining the request leads to a duty on the authority to consider that as a cause to serve a school attendance order makes it effectively mandatory. Families have a right to privacy of their homes and this takes away that privacy, invading family rights. It is particularly unacceptable in light of the fact that if a child is on a child protection plan, CSS have no right to access the family home and must make a court application to assess the child if access is refused when asked for. Local authorities being the issuing and prosecuting agency for school attendance orders would be empowered to bypass that requirement solely for home educated children with no other cohort, including children at significant risk of harm, being subject to involuntary access to their homes without a court order.
26. **Page 65 42 and 66 32** '(b) for the child to receive education, otherwise than at a school, that is in their best interests, ... b) for the child to receive education, otherwise than at a school, that is in their best interests'. These provisions again refer to decisions about a child's best interests which should not be made by local authorities and it follows that removal of the earlier provisions relating to best interests (which we consider to be essential) would have the effect of removing these two sections.
27. **Page 66 line 8** '(4) If a person is aggrieved by a refusal of the local authority to comply with a request under subsection (2) (a) the person may refer the question to the Secretary of State, and (b) the Secretary of State must give such direction determining the question as the Secretary of State considers appropriate.'
28. The committee may or may not be aware that the Secretary of State has never, not once, revoked a school attendance order for a home educated child on request including in cases when such orders have been served manifestly inappropriately. Furthermore, the Local Government Ombudsman will not consider such cases and judicial review is financially untenable; parents have no realistic redress if a local authority acts inappropriately. We strongly believe that access to first tier tribunal must be provided to home educating families in order to give them a means of redress in situations in which local authorities act inappropriately. Without access to tribunal services, parents are dependent on local authorities always acting correctly and appropriately. Education Otherwise is aware of numerous incidents when this has not been the case, mainly concentrated in a small number of authority areas.

29. Page 67 line 3 '(5) A person who (a) fails to comply with the requirements of a school attendance order under section 436I by not causing a child to become a registered pupil at the school named in the order, and (b) is convicted of an offence under this section in respect of the failure, may be found guilty of an offence under this section again if the failure continues.'
30. This allows the local authority to repeatedly prosecute the parent under the same school attendance order without any form of further enquiry. Whilst my field is family and education law, I am advised by criminal law Counsel that this provision would not be compliant with the long established legal position of prosecutors not being able to prosecute twice on the same material facts.
31. **Page 67 line 11** '(6) If, in proceedings for an offence under this section, the person is acquitted, the court **may** direct that the school attendance order ceases to be in force.'
32. Whilst this carries over from previous legislation, as the parent is acquitted, it is most clear that should this be 'must' rather than 'may' as an acquitted person should not continue to carry the burden of a school attendance order which leaves them open to further prosecution, adverse effect on employment and excessive scrutiny.
33. This Bill is based solely on rhetoric, with no evidence base to support its provisions affecting home educating families. It carries provisions which genuinely will act to safeguard children, but those provisions are within the first half, it is a Bill which should have been two Bills. The Bill treats home educating families as guilty until proven innocent, puts them under immense reporting burden and interferes with their rights to family life in ways which no other family is expected to tolerate.

Yours faithfully

Wendy Charles-Warner,  
Chair, Education Otherwise

*January 2025*